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21
22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**
24

25 In re BANC OF CALIFORNIA
26 SECURITIES LITIGATION,

Case No.: 8:17-cv-00118-DMG (DFMx)

CLASS ACTION

27 This Document Relates To:

28 ALL ACTIONS.

**DEFENDANT STEVEN A.
SUGARMAN'S OBJECTIONS TO NON-
PARTY MUDDY WATERS CAPITAL
LLC'S EVIDENCE IN SUPPORT OF
ITS APPLICATION FOR LEAVE TO
FILE UNDER SEAL IN SUPPORT OF
MOTION FOR SANCTIONS AND
CONTEMPT ORDER**

Date: December 15, 2023
Time: 9:30 A.M.
Judge: Hon. Dolly M. Gee
Courtroom: 8C

Defendant Steven A. Sugarman (“Sugarman”) hereby objects to the evidence of Non-Party Muddy Waters Capital LLC’s (“Muddy Waters”) in support of its Application for Leave to File Under Seal Documents in Support of Motion for Sanctions and Contempt Order against Defendant Steve A. Sugarman and Latham & Watkins LLP (“Application”) (Dkt. No. 624) as follows:

I. DECLARATION OF DILAN ESPER

<u>EVIDENCE</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING</u>
Mr. Sugarman has also taken the position, which I believe to be frivolous but is nonetheless his position, that the Expert Report is protected by the lawyer-client privilege. Declaration of Dilan Esper, ¶ 6.	<u>Improper Opinion/Legal Conclusion.</u> Fed. R. Evid. 701. <u>Misstates Evidence.</u> Fed. R. Evid. 403. Mr. Sugarman has stated that he believed his communications with Mr. Levine were covered by attorney client privilege. Declaration of Steven Sugarman ¶ 7. <u>Conclusory “Fact”.</u> <i>National Steel Corp. v. Golden Eagle Ins. Co.</i> , 121 F.3d 496, 502 (9th Cir. 1997) [finding that conclusory allegations, without factual support, are insufficient to satisfy burden]. <u>Hearsay.</u> F.R.E. 802.	Sustained: Overruled:
As set forth more fully in Muddy Waters’ forthcoming Sanctions Motion, Latham should have designated the Expert Report “Attorneys’ Eyes Only” pursuant to Section II, Paragraph 2 of the Protective	<u>Improper Opinion/Legal Conclusion.</u> Fed. R. Evid. 701. <u>Misstates Evidence</u> (Fed. R. Evid. 403). As set forth in Steven Sugarman’s Opposition to Muddy	Sustained: Overruled:

<u>EVIDENCE</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING</u>
<p>Order because it contains extensive references to Muddy Waters’ document production in this case, which Magistrate Judge McCormick previously ruled constituted “Attorney’s Eyes’ Only” material in its entirety. <i>In re Subpoenas to Produce Documents, Information, or Objects to Muddy Waters, et al.</i>, No. 2:18-mc-00147-AG (DFMx), Dkt. 31, Order (Jan. 8, 2019) (“McCormick Order”), at 5.</p> <p>Declaration of Dilan Esper, ¶ 7.</p>	<p>Waters’s Motion for Sanctions and Contempt Order, (the “Opposition”), the Exert Report did not contain extensive references to Muddy Waters’s document production.</p> <p><u>Conclusory “Fact”</u>. <i>National Steel Corp. v. Golden Eagle Ins. Co.</i>, 121 F.3d 496, 502 (9th Cir. 1997) [finding that conclusory allegations, without factual support, are insufficient to satisfy burden].</p> <p><u>Lack of Personal Knowledge/Foundation</u>. F.R.E. 602, 701.</p>	
<p>Moreover, Mr. Lee derives his general thesis and conclusion in the Expert Report on Muddy Waters’ document production, which he admits that he reviewed and considered in full. <i>Id.</i> ¶ 45, n.52 & Appendix § B, item [246].</p> <p>Declaration of Dilan Esper, n. 2.</p>	<p><u>Improper Opinion/Legal Conclusion</u>. Fed. R. Evid. 701.</p> <p><u>Misstates Evidence</u> (Fed. R. Evid. 403). Muddy Waters’ document production is listed as 1 of 248 sources that Mr. Lee considered. Declaration of Dilan Esper, Ex. 1 at Section IX (B).</p> <p><u>Hearsay</u>. F.R.E. 802.</p>	
<p>because the Expert Report contains extensive references to Muddy Waters’ AEO document production, containing “proprietary and sensitive business information,”</p> <p>Declaration of Dilan Esper, ¶ 8.</p>	<p><u>Improper Opinion/Legal Conclusion</u>. Fed. R. Evid. 701.</p> <p><u>Misstates Evidence</u> (Fed. R. Evid. 403). Muddy Waters’ document production is listed as 1 of 248 sources that Mr. Lee considered. Declaration of Dilan Esper, Ex. 1 at Section IX (B).</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

<u>EVIDENCE</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING</u>
	<u>Hearsay. F.R.E. 802.</u>	
Muddy Waters reserves its rights to argue that the Transmittal Emails are not privileged on the grounds they are evidence of a willful violation of the Protective Order and McCormick Order, and therefore not privileged under the crime-fraud exception, and that they were, in any event, forwarded to a third party, Adam Levine. Declaration of Dilan Esper, ¶ 10.	<u>Improper Argument/Argumentative without Evidentiary Fact. Fed. R. Evid. 701.</u>	Sustained: _____ Overruled: _____

Dated: November 22, 2023

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By: /s/ Marc R. Jacobs
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